



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA-R02-RCRA-2018-0034; FRL-9974-06-Region 2]

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses the regulations entitled “Approved State Hazardous Waste Management Programs” to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State regulations that will be subject to EPA’s inspection and enforcement. This rule does not incorporate by reference the New York hazardous waste statutes. The rule codifies in the regulations the prior approval of New York’s hazardous waste management program and incorporates by reference authorized provisions of the State’s regulations.

DATES: This regulation is effective [insert date 60 days after the date of publication in the Federal Register], unless EPA receives adverse written comment on this regulation by the close of business [insert date 30 days after the date of publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the Federal Register informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of [insert date 60 days after the date of publication in the Federal Register] in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-RCRA-2018-0034, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: azzam.nidal@epa.gov.
- Fax: (212) 637-4437.
- Mail: Send written comments to Nidal Azzam, Base Program Management Section Chief, Hazardous Waste Programs Branch, Clean Air and Sustainability Division, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.
- Hand Delivery or Courier: Deliver your comments to Nidal Azzam, Base Program Management Section Chief, Hazardous Waste Programs Branch, Clean Air and Sustainability Division, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007. Such deliveries are

only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID. No. EPA-R02-RCRA-2018-0034.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>).

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy. You can inspect and copy the records related to this codification effort at EPA Region 2 by appointment only. To make an appointment please call (212) 637-3703.

FOR FURTHER INFORMATION CONTACT: Nidal Azzam, Base Program Management Section Chief, Hazardous Waste Programs Branch, Clean Air and Sustainability Division, EPA Region 2, 290 Broadway, 22nd floor, New York, NY 10007; telephone number: (212) 637-3703; fax number: (212) 637-4437; e-mail address: azzam.nidal@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Incorporation by Reference

A. What is codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory

language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is federally enforceable. EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What is the history of the authorization and codification of New York's hazardous waste management program?

New York initially received final authorization for its hazardous waste management program, effective on May 29, 1986 (51 FR 17737) to implement its base hazardous waste management program. Subsequently, EPA authorized revisions to the State's program effective July 3, 1989 (54 FR 19184), May 7, 1990 (55 FR 7896), October 29, 1991 (56 FR 42944), May 22, 1992 (57 FR 9978), August 28, 1995 (60 FR 33753), October 14, 1997 (62 FR 43111), January 15, 2002 (66 FR 57679), March 14, 2005 (70 FR 1825, as corrected on April 5, 2005 (70 FR 17286)), August 31, 2009 (74 FR 31380), January 12, 2010 (75 FR 1617), and May 10, 2013 (78 FR 15299). EPA codified New York's authorized hazardous waste program effective September 30, 2002 (67 FR 49864), May 25, 2007 (72 FR 14044), and October 4, 2010 (75 FR 45489). In this action, EPA is revising subpart HH of 40 CFR part 272 to include the authorization revision actions that became effective January 12, 2010 and May 10, 2013.

C. What decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the New York rules described in the amendments to 40 CFR part 272 set forth below. EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

This action codifies EPA's authorization of revisions to New York's hazardous waste management program. This codification reflects the State program in effect at the time EPA authorized revisions to the New York hazardous waste program in final rules dated January 12, 2010 (75 FR 1617) and May 10, 2013 (78 FR 15299). The rule incorporates by reference the most recent version of the State's authorized hazardous waste management regulations. EPA has already provided notices and opportunity for comments on the Agency's decisions to authorize the New York program, and EPA is not now reopening the decision, nor requesting comments, on the New York authorizations as published in the Federal Register documents specified in Section B of this preamble concerning revisions to the authorized program in New York.

EPA is incorporating by reference the authorized revisions to the New York hazardous waste program by revising subpart HH to 40 CFR part 272. Title 40 CFR 272.1651 previously incorporated by reference New York's authorized hazardous waste regulations, as amended effective September 5, 2006, as well as selected provisions as found in the New York regulations dated January 31, 1992. Section 272.1651 also references the demonstration of adequate

enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.1651 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which were evaluated as part of the approval process of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of New York's codification on enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not incorporating by reference New York's inspection and enforcement authorities nor are those authorities part of New York's approved State program which operates in lieu of the Federal program. Title 40 CFR 272.1651(c)(2) lists these authorities for informational purposes, and because EPA also considered them in determining the adequacy of New York's procedural and enforcement authorities. New York's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What State provisions are not part of the codification?

The public is reminded that some provisions of New York's hazardous waste

management program are not part of the federally authorized State program. These non-authorized provisions include:

- (1) Provisions that are not part of the RCRA subtitle C program because they are “broader in scope” than RCRA subtitle C (see 40 CFR 271.1(i));
- (2) Unauthorized amendments to authorized State provisions;
- (3) New unauthorized State requirements;
- (4) State procedural and enforcement authorities which are necessary to establish the ability of the State’s program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities; and
- (5) Federal rules for which New York was previously authorized but which were later vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379; June 27, 2014). See 80 FR 18777 (April 8, 2015).

State provisions that are “broader in scope” than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1651(c)(3) lists the New York statutory and regulatory provisions which are “broader in scope” than the Federal program and which are not part of the authorized program being incorporated by reference. This action updates that list of “broader in scope” provisions. While “broader in scope” provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

Additionally, New York’s hazardous waste regulations include amendments which have not been authorized by EPA. Since EPA cannot enforce a State’s requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is

important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by EPA include amendments to previously authorized State regulations as well as new State requirements.

State regulations that are not incorporated by reference in this rule at 40 CFR 272.1651(c)(1), or that are not listed in 40 CFR 272.1651(c)(3) ("broader in scope") or 40 CFR 272.1651(c)(2) ("procedural and enforcement authorities"), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

F. What will be the effect of Federal HSWA requirements on the codification?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirement implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

II. Statutory and Executive Order Reviews

This rule codifies EPA-authorized hazardous waste requirements pursuant to RCRA section 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review - The Office of Management and Budget (OMB) has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act - This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act - This rule codifies New York's authorized hazardous waste management regulations in the CFR and does not impose new burdens on small entities.

Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

4. Unfunded Mandates Reform Act - Because this rule codifies pre-existing State hazardous waste management program requirements which EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

5. *Executive Order 13132: Federalism* - Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government). This action codifies existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA.

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments* - Executive Order 13175 (65 FR 67249, November 6, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes).

7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks* - This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use* - This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

9. *National Technology Transfer Advancement Act* - The requirements being codified are the result of New York's voluntary participation in EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

10. Executive Order 12988 - As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), EPA has taken the necessary steps in this action to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12898 – This Order (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Because this rule codifies pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

12. Congressional Review Act - EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*, as amended) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective *[insert date 60 days after date of publication in the Federal Register]*.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business

information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 27, 2017.

Peter D. Lopez,
Regional Administrator,
Region 2.

Editorial note: This document was received for publication by the Office of the Federal Register on April 18, 2018.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.1651 to read as follows:

§ 272.1651 New York State-administered program: Final authorization.

(a) *New York State authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New York has final authorization for the following elements as submitted to EPA in New York's base program application for final authorization which was approved by EPA effective on May 29, 1986. Subsequent program revision applications were approved effective on July 3, 1989, May 7, 1990, October 29, 1991, May 22, 1992, August 28, 1995, October 14, 1997, January 15, 2002, March 14, 2005, August 31, 2009, January 12, 2010, and May 10, 2013.

(b) *Authorization enforcement.* The State of New York has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to

exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations*--(1) *Statutes and regulations that are incorporated by reference.* The New York regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the New York regulations that are incorporated by reference in this paragraph from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, Eagan, MN 55164-0526; Phone: 1-800-328-4880; Website: <http://west.thomson.com>. You may inspect a copy at EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007 (Phone number: (212) 637-3703), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

<http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled “EPA-Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated May 2013.

(ii) [Reserved]

(2) *Statutes and regulations that are not incorporated.* EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2004 Cumulative Pocket Part: sections 1-0303(18), 3-0301(1) (introductory paragraph); 3-0301(1)(a), (b), (m), (o), (w), (x) and (cc); 3-0301(2) introductory paragraph; 3-0301(2)(a), (b), (d) through (j), (l), (m), (q) and (z); 3-0301(4); 19-0301(1) (except 19-0301(c), (e) and (f)); 19-0303(1) through (3); 19-0304; 23-2305; 23-2307; 27-0105; 27-0701; 27-0703; 27-0705; 27-0707 (except 27-0707(2-c)); 27-0711; 27-0900 through 27-0908; 27-0909 (except 27-0909(5)); 27-0910 through 27-0922; 27-1105; 70-0101; 70-0103; 70-0105 (except 70-0105(3) and 70-0105(6)); 70-0107(1) and (2); 70-0107(3) introductory paragraph; 70-0107(3)(l); 70-0109; 70-0113; 70-0115 (except (2)(c) and (d)); 70-0117 (except 70-0117(5) through (7); 70-0119; 70-0121; 71-0301; 71-1719; 71-2705; 71-2707; 71-2709 through 71-2715; 71-2717; 71-2720; and 71-2727.

(ii) McKinney's Consolidated Laws of New York, Book 1, Executive Law (EL), Article 6: section 102.

(iii) McKinney's Consolidated Laws of New York, Book 46, Public Officers Law (POL), as amended through 2004: sections 87 and 89.

(iv) McKinney's Consolidated Laws of New York, Book 7B, Civil Practice Law and Rules (CPLR), as amended through 2004: sections 1013, 6301; 6311; and 6313.

(v) Electronic Signatures and Records Act (ESRA) State Technology Law (STL), Article 3, as amended effective August 17, 2009: sections 305 and 306.

(vi) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, as amended effective through September 5, 2006: sections 372.1(f); 373-1.1(f) and (g); 373-1.4(b); 373-1.4(d) through (f); 373-1.6(c); 621.1 through 621.4; 621.5 (except (d)(5), (d)(6)(i),

(d)(7)(i)(a), (d)(7)(i)(c) and (d)(9)); 621.6 (except (b), (d)(4) and (d)(5)); 621.7; 621.8; 621.9 (except (a)(5), (c)(2) and (e)(2)); 621.10; 621.11 (except (d)); 621.12 through 621.15; and 621.16 (except (b), (d) and (e)).

(vii) Title 9, New York Codes, Rules and Regulations (9 NYCRR), Part 540, Electronics Signature and Records Act, as amended effective May 7, 2003: sections 540.1 through 540.6.

(3) *Statutes and regulations that are broader in scope.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2004 Cumulative Pocket Part: sections 27-0301; 27-0303; 27-0305; 27-0307; 27-0909(5); 27-0923; 27-0925 and 27-0926.

(ii) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 2006 Cumulative Pocket Part: section 27-1109(6).

(iii) The following New York provisions are broader in scope because the State implements a Household Hazardous Waste program, whereas the Federal program excludes household waste from regulation as hazardous waste at 40 CFR 261.4(b)(1): Title 6, New York Codes, Rules and Regulations (6 NYCRR), as amended effective through September 5, 2006: sections 370.2(b)(92) “Household hazardous waste”; 370.2(b)(93) “Household hazardous waste collection facility”; and 373-4.

(iv) At 371.4(c), New York retains K064, K065, K066, K090 and K091 as hazardous wastes while EPA has removed them from the table at 40 CFR 261.32 and no longer regulates them as hazardous wastes (64 FR 56469; October 20, 1999).

(v) In the following provisions of New York's hazardous waste regulations, the State cross-references Part 364 "Waste Transporter Permits" requirements, which sets forth transporter requirements regarding permit and financial liability requirements: 372.2(b)(5)(ii), 372.3(a)(1), 372.3(a)(4), 372.3(b)(6)(iv), 372.3(d)(3), 373-2.5(b)(3)(ii)(d) and (e), 373-1.7(h)(3), 373-3.5(b)(3)(ii)(d) and (e), 374-3.4(a)(2), and Appendix 30 Instructions for Generators/Item 8. These provisions referencing the Part 364 transporter permit and financial liability requirements are broader in scope than the Federal program.

(vi) New York did not adopt an analog to 40 CFR 261.4(g) that excludes certain dredged materials from the State definition of hazardous waste. Instead, the State subjects these materials to full regulation as hazardous wastes.

(vii) New York State regulations do not incorporate the Mineral Processing Secondary Materials Exclusion at 40 CFR 261.4(a)(17) and the related changes affecting 40 CFR 261.2(c)(3) and (c)(4)/Table, and 40 CFR 261.2(e)(1)(iii). Since New York did not adopt the exclusion at 40 CFR 261.4(a)(17) the State has a broader in scope program because the effect is to include materials that are not considered solid waste by EPA.

(viii) The following New York provisions are broader in scope because they include requirements associated with the regulation of PCB waste as a state-only hazardous waste: 371.4(e), 372.1(e)(9), 373-1.1(d)(1)(x), 374-2.2(a)(9), 374-2.2(b) Table 1 and Footnote 2, 374-2.5(e)(4), 374-2.6(d)(4), 374-2.7(d)(4), 376.1(g)(1)(i), and 376.4(f). PCB wastes are regulated under the Federal Toxic Substances Control Act (TSCA) at 40 CFR part 761 rather than under the Federal RCRA program.

(ix) The New York provision at 373-1.4(c) is broader in scope because it includes siting

certificate requirements which are not part of the Federal program.

(x) The New York provision at 373-2.15(a)(2) is broader in scope because it subjects incinerators to not just limited portions of the State's Air regulations in the same manner as the Federal rules, but entire programs including air program-specific permits and registrations.

(xi) The New York provisions at 374-2.5(a)(2) and 374-2.6(a)(2) cross-reference 360-14.1(a)(4), which sets forth transfer facility and processor/re-refiner requirements for these types of facilities co-located at hazardous waste management facilities. These provisions referencing the Part 360 requirements are broader in scope than the Federal program because section 360-14.1(a)(4) may require used oil transfer facilities and processors/re-refiners managing non-hazardous used oil to be subject to State-only Part 360 provisions including permit requirements. The Federal program does not have an analogous permitting requirement for these types of facilities.

(4) *Vacated Federal rule.* New York provisions at 371.1(e)(1)(xvi) and 371.4(i) are no longer considered to be part of New York's authorized program because the equivalent federal requirements were vacated by a federal court. The Federal Requirements ((Hazardous Waste Combustors; Revised Standards (HSWA) (40 CFR 261.4(a)(16) and 261.38 only) were published on June 19, 1998. The New York regulations were authorized on January 11, 2005 (effective March 14, 2005). The State's authorized program was subsequently codified in 40 CFR part 272 on March 26, 2007 (effective May 25, 2007). However, the corresponding Federal rules were later vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379; June 27, 2014). Consistent with the Court's vacatur, EPA issued a new final rule removing 40 CFR 261.4(a)(16) and 261.38 from the Federal CFR (published on April 8,

2015)

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 2 and the State of New York, signed by the Commissioner of the State of New York Department of Environmental Conservation on July 20, 2001, and by the EPA Regional Administrator on January 16, 2002, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority*. “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of New York in 1985 and revisions, supplements, and addenda to that Statement dated August 18, 1988, July 26, 1989, August 15, 1991, October 11, 1991, July 28, 1994, May 30, 1997, February 5, 2001, April 2, 2004, June 13, 2008 (including three certifications), August 17, 2009, and May 22, 2012, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description*. The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by revising the listing for “New York” to read as follows:

Appendix A to Part 272-State Requirements

* * * * *

New York

The regulatory provisions include:

Title 6, New York Codes, Rules and Regulations (6 NYCRR), Chapter IV, Quality Services, Subchapter B, Solid Wastes (Volumes A-2 and A-2A), as amended effective through September 5, 2006.

Please note: For a few regulations, the authorized regulation is an earlier version of the New York State regulation. For these regulations, EPA authorized the version of the regulations that appear in the Official Compilation of Codes, Rules and Regulations dated January 31, 1992. New York State made later changes to these regulations but these changes have not been authorized by EPA. The regulations where the authorized regulation is an earlier version of the regulation are noted below by inclusion in parentheses of January 31, 1992 after the regulatory citations.

Part 360, Subpart 360-14 - Used Oil: Sections 360-14.1(b)(7) and 360-14.1(b)(8).

Part 370 - Hazardous Waste Management System - General: Sections 370.1(a) (except (a)(3)); 370.1(b) through (d); 370.1(e) (except (e)(9)); 370.1(f); 370.2(a); 370.2(b)(1) through (b)(15) “battery”; 370.2(b)(15) “bedrock”, (January 31, 1992); 370.2(b)(17) through (b)(91); 370.2(b)(94) through (b)(125); 370.2(b)(127) through (b)(137); 370.2(b)(139) through (b)(221); 370.3 (except 370.3(c)); 370.4; 370.5 (except (b)).

Part 371 - Identification and Listing of Hazardous Waste: Sections 371.1(a) through (c);

371.1(d) (except (d)(1)(ii)(c)); 371.1(e) (except 371.1(e)(1)(xvi) and (e)(2)(vi)(b)(21)); 371.1(f)(1) through (7); 371.1(f)(8) (except the phrase “or such mixing occurs at a facility regulated under Subpart 373-4 or permitted under Part 373 of this Title”); 371.1(f)(9) and (f)(10); 371.1(g)(1) (except (g)(1)(ii)(c) and (g)(1)(v)); 371.1(g)(2) through (4); 371.1(h) through (j); 371.2; 371.3; 371.4(a) and (b); 371.4(c) (except K064, K065, K066, K090 and K091 entries); 371.4(d) and (f).

Part 372 - Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities: Sections 372.1(a) through (d); 372.1(e)(2)(ii)(c) (January 31, 1992); 372.1(e)(2)(iii)(c) (January 31, 1992); 372.1(e)(3) through (e)(8); 372.1(g) and (h); 372.2 (except (b)(5)(ii) and (b)(9)); 372.3 (except (a)(1), (a)(4), (a)(7)(i), (a)(8), (b)(3), (b)(5)(ii), (b)(6)(iv), (b)(7)(i)(d), (c)(4) and (d)(3)); 372.5 (except (h) and (i); 372.6; 372.7(a) and (b); 372.7(c) (except (c)(1)(ii)); and 372.7(d).

Part 373, Subpart 373-1 - Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373-1.1(a) through (c), 373-1.1(d) (except (d)(1)(iii)(b), (d)(1)(iii)(c)(6), (d)(1)(iii)(d), (d)(1)(iv)(a) and (b), (d)(1)(x), (d)(1)(xvi), and (d)(1)(xviii)); 373-1.1(e); 373-1.1(h) and (i); 373-1.2; 373-1.3; 373-1.4(a); 373-1.4(g) and (h); 373-1.5(a) (except (a)(2)(xviii)); 373-1.5(b) and (c); 373-1.5(d) through (p) (except reserved paragraphs); 373-1.6 (except (c)); 373-1.7 through 373-1.11.

Part 373, Subpart 373-2 - Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373-2.1 through 373-2.4; 373-2.5(a); 373-2.5(b) (except (b)(1)(i)(c), (b)(3)(ii)(d) and (b)(3)(ii)(e)); 373-2.5(c) through (g); 373-2.6 through 373-2.11; 373-2.12 (except 373-2.12(a)(1) and (d)); 373-2.12(a)(1) (January 31, 1992);

373-2.13; 373-2.14; 373-2.15 (except (a)(2)); 373-2.19 (except (e)(1)(ii)); 373-2.23; 373-2.24; and 373-2.27 through 373-2.31.

Part 373, Subpart 373-3 - Interim Status Standards Regulations for Owners and Operators of Hazardous Waste Facilities: Sections 373-3.1 (except 373-3.1(a)(4)); 373-3.2 through 373-3.4; 373-3.5 (except 373-3.5(b)(1)(i)(c), (b)(3)(ii)(d) and (b)(3)(ii)(e)); 373-3.6 through 373-3.18; 373-3.23; and 373-3.27 through 373-3.31.

Part 374, Subpart 374-1 - Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities: Sections 374-1.1; 374-1.3; 374-1.6 (except (a)(2)(iii)); 374-1.7; 374-1.8 (except reserved sections); 374-1.9; and 374-1.13.

Part 374, Subpart 374-2 – Standards for the Management of Used Oil: Sections 374-2.1 (except (a)(2) “Adjacent towns or cities”, (a)(4) “Contract”, (a)(10) “On-premises oil changing operation”, (a)(14) “Retail”, (a)(15) “Retail establishment”, (a)(16) “Service establishment”, (a)(18) “Total halogens”, (a)(19) “Underground used oil tank”, and (a)(27) “Used oil tank system”); 374-2.2; 374-2.3 (except (c)(3) through (c)(6), and (f)); 374-2.4; 374-2.5 (except (a)(2) and (e)(4)); 374-2.6 (except (a)(2) and (d)(4)); 374-2.7 (except (d)(4), (e)(5) and (e)(6)); 374-2.8; and 374-2.9.

Part 374, Subpart 374-3 - Standards for Universal Waste: Sections 374-3.1 (except (f) and (g)); 374-3.2; 374-3.3; 374-3.4 (except (a)(2)); and 374-3.5 through 374-3.7.

Part 376 - Land Disposal Restrictions: Sections 376.1 (except (a)(5), (a)(9), (e), (f), and (g)(1)(ii)(b)); 376.2; 376.3 (except (b)(4) and (d)(2)); 376.4 (except (c)(2), (e)(1) – (7), and (f)); and 376.5.

Appendices: Appendices 19 through 25; Appendices 27 through 30; Appendix 33;

Appendix 37; Appendix 38; Appendices 40 through 49; and Appendices 51 through 55.

Copies of the New York regulations that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, Eagan, MN 55134-0526; Phone: 1-800-328-4880; Website: *<http://west.thomson.com>*.

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